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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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10 United States of America, }
11 Plaintiff/Respondent, } No. CV-16-08051-PCT-PGR (MHB)
12 vs. } No. CR-12-08088-PCT-PGR
13 Shawn Lorin Henderson, }
14 Defendant/Movant. }

15 ORDER
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Having reviewed *de novo* the Report and Recommendation of Magistrate Judge Burns in light of the movant's failure to object to the Report and Recommendation and the United States' partial objection to the Report and Recommendation (Doc. 11), the Court finds that the Magistrate Judge correctly concluded that the movant's motion, filed pursuant to 28 U.S.C. § 2255, must be dismissed with prejudice.¹

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25 The United States partially objects to the Report and Recommendation
26 solely on the ground that it does not also recommend the dismissal of the movant's motion on three additional grounds raised by the United States in its response. Since the ground relied upon by the Magistrate Judge is by itself dispositive of the movant's motion, neither the Magistrate Judge nor the Court has any reason to reach the additional grounds and the Court overrules the United States' partial objection.

1 The movant raises a single claim in his motion, the gist of which is that his trial
2 counsel provided ineffective assistance because she did not have his co-defendant
3 testify at the movant's trial.² The Court agrees with the Magistrate Judge that this
4 claim is meritless because the movant has neither alleged nor provided any
5 evidence that his co-defendant would have voluntarily testified at the movant's trial,
6 that any testimony on his part would have been favorable to the movant, or that any
7 testimony on his part would have resulted in a different verdict for the movant.
8 Therefore,

IT IS ORDERED that the Magistrate Judge's Report and Recommendation
(Doc. 11) is accepted and adopted by the Court.

11 IT IS FURTHER ORDERED that the movant's Motion Under 28 U.S.C. § 2255
12 to Vacate, Set Aside or Correct a Sentence by a Person in Federal Custody (Doc.
13 1 in CV-16-08051 and Doc. 118 in CR-12-08088) is denied and that this action is
14 dismissed with prejudice.

IT IS FURTHER ORDERED that a certificate appealability shall not issue and
that leave to appeal *in forma pauperis* is denied because the movant has not made
a substantial showing of the denial of a constitutional right.

IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment accordingly.

DATED this 13th day of February, 2017.

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23 Paul G. Rosenblatt
United States District Judge

At the time of the movant's trial, the co-defendant had already changed his plea to guilty and was awaiting sentencing.